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No. 04-778

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

PAN AMERICAN ENERGY, LLC
Petitioner,

v.

CANDLEWOOD TIMBER GROUP, LLC, and
FORESTAL SANTA BARBARA SRL,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware

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BRIEF *AMICUS CURIAE* OF THE REPUBLIC OF ARGENTINA IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

May a state court wholly disregard foreign sovereign interests in deciding whether to exercise jurisdiction over a foreign dispute?

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INTEREST OF *AMICUS CURIAE*[1]

This is a dispute over conflicting uses of land located in the Republic of Argentina. Under Argentina's Constitution, the subsurface resources involved in the case are owned by the country's federal and provincial governments as public utilities for the benefit of the Nation. Given Argentina's profound national interest in ensuring the orderly and efficient development of these public resources, Argentina has established a comprehensive regime regulating and harmonizing the competing interests of surface property owners (such as Respondents) and holders of rights to extract subsurface hydrocarbons (such as Petitioner). The Government of Argentina believes that this case, brought by Respondents in an American state court rather than in the Argentine courts, threatens Argentina's sovereign interest in developing and regulating its natural resources. Underlining the depth of Argentina's concern regarding this case, its Embassy has found it necessary to notify the United States Department of State of Argentina's "utmost interest" in seeing that this dispute is resolved in Argentine courts.

In the decision below, the Delaware Supreme Court deemed Argentina's overwhelming sovereign interest in this case "legally irrelevant" to the court's *forum non conveniens* analysis. That decision not only conflicts with the decisions of other American jurisdictions, but it also exposes Argentina's economy and environment to the *ad hoc* management of foreign tribunals with no appreciation for either the subtleties of the law of Argentina or the nation's

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amicus* or its counsel, contributed monetarily to the preparation or submission of this brief. *Amicus* is filing this brief with the consent of the parties. Written consents are on file with the Clerk.

paramount interest in the management of its natural resources. Accordingly, the Republic of Argentina has a profound interest in seeing the Delaware Supreme Court's decision corrected and brought into conformity with the views of most other American courts.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case implicates interests at the core of Argentina's sovereignty -- namely its ability to manage the exploitation of its natural resources. The Respondents in this case, Candlewood Timber Group, LLC ("Candlewood") and Forestal Santa Barbara SRL ("FSB") harvest timber from land in Argentina's Salta Province. Pet. App. 2a. Petitioner Pan American Energy, LLC ("Pan American") extracts oil and gas from the same land and is Argentina's second largest hydrocarbon producer. *Id.* Pan American extracts these hydrocarbons under concessionary rights granted by the Argentine Government, which, under the Constitution, retains ownership of all hydrocarbon fields as public utilities. *Id.*; *see also id.* at 59a. The Government derives substantial revenues from royalties paid by concessionaires such as Pan American. *Id.* at 44a. Respondents contend that Pan American damaged the surface of the land, impairing their forestry operations, and they filed suit in Delaware state court. *Id.* at 3a.

The parties' dispute involves a topic over which Argentina has established a comprehensive regulatory framework. To harmonize the activities of concessionaires and surface land users, the Argentine Hydrocarbon Law and other enactments precisely and exhaustively define the rights and duties of each party. *Id.* at 60a-63a. These regulations further a national policy of aggressive yet well-managed development of natural resources. *Id.* at 53a n.1, 61a. Thus, while in some nations a dispute such as that involved in this

case might be regarded as a purely private dispute, such is not the view in Argentina.

Shortly after Candlewood and FSB filed their lawsuit in Delaware, Pan American filed a petition in the Supreme Court of Argentina asserting that the Argentine courts had exclusive jurisdiction over the dispute. *Id.* at 43a. The Attorney General of Argentina issued an opinion supporting the Argentine courts' exclusive jurisdiction, and the Republic of Argentina and the Province of Salta (both of which derive substantial income from Pan American's activities) joined as parties in the Supreme Court of Argentina. *Id.*

The Government of Argentina has formally expressed its objections to the Delaware lawsuit in a letter to the United States State Department. The letter from the Argentine Embassy reiterated the Attorney General's opinion regarding jurisdiction and stated Argentina's view that "it is of its utmost interest that legal questions arising [under the Hydrocarbon Law] be dealt with . . . before the Courts of the Argentine Republic." *Id.* at 115a-116a.

Notwithstanding Argentina's overwhelming interests in this case, the Delaware Supreme Court has allowed this case to go forward in its trial courts, rejecting Pan American's *forum non conveniens* objection. Disregarding its duty under supreme federal common law to attend to the foreign relations implications of its analysis, the Delaware court applied its own particular state law rules and considered only the narrow interests of the private litigants. *Id.* at 15a-16a. Remarkably, it went so far as to hold that Argentina's sovereign interests were "legally irrelevant." *Id.* at 15a; *see also id.* at 16a (stating that Argentina's interests "have no logical relevance").

The Delaware Supreme Court's erroneous decision requires this Court's review for two reasons. *First*, this

decision has substantial implications for the foreign relations of the United States because it threatens a coordinate sovereign's control over a matter crucial to its sovereignty -- its ability to regulate the development of its natural resources. Foreign nations cannot easily tolerate a regime in which their critical interests are subjected to the regulation of fifty different states, each applying its own idiosyncratic views, particularly in a matter so central to domestic sovereignty as the management of the nation's natural resources according to its own laws. Argentina regards this threat as serious enough to merit an official notification to the State Department, and it renews its expression of deep concern here. *Second*, not only is this case one of high importance given the foreign relations considerations involved, but the Delaware Supreme Court's decision also conflicts with decisions of other federal and state courts that have properly recognized the need to take into account the interests of foreign nations in deciding whether to assert jurisdiction over disputes that implicate the fundamental interests of other sovereign nations.

REASONS FOR GRANTING THE PETITION

The Republic of Argentina wholeheartedly agrees with this Court's observation that "matters bearing on the Nation's foreign relations 'should not be left to divergent and perhaps parochial state interpretations.'" *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n.11 (1983) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964)). This Court is the only American tribunal capable of remedying such divergences, and it should grant review in this case in order to ensure that all American courts honor the interests of foreign sovereigns.

1. Wholly apart from the fact that the Delaware court's decision conflicts with other authorities, this case merits

review because of its importance to international relations. As Congress and the courts have long recognized, few aspects of a nation's sovereignty are more crucial than its ability to control the natural resources within its own territory. *See, e.g., United States v. Mitchell*, 553 F.2d 996, 1002 (5th Cir. 1997) (noting that Congress "recognizes the authority of other sovereigns to protect and exploit their own resources"); *Int'l Ass'n of Machinists & Aerospace Workers v. OPEC*, 477 F. Supp. 553, 568 (C.D. Cal. 1979) ("By necessity and by traditional recognition, each nation is its own master in respect to its physical attributes."), *aff'd* 649 F.2d 1354 (9th Cir. 1981). National sovereignty over exploitation of natural resources is likewise a well-entrenched principle of international law. *See* G.A. Res. 1803, U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217 (1962).

These considerations of sovereignty are heightened in this case because Argentina's Constitution reserves ownership of subsurface hydrocarbons to the Government. Thus, this is not merely a dispute regarding land *in* Argentina, but it is rather a dispute regarding the handling of vital natural resources owned by Argentina itself. As explained above, Argentina views the development of its oil and gas resources as a central national interest. Reflecting this concern, the Government of Argentina declared in its filings in the Supreme Court of Argentina that this case puts "basic institutions of the Nation . . . at risk" and that "Argentine sovereignty and provision of public services are at stake." Pet. App. 70a-71a. Indeed, the Delaware trial court recognized (in a conclusion incorrectly deemed "irrelevant" by the Delaware Supreme Court) that this case would "implicate Argentina's economic interests" because it could affect the revenues the Government derives from its concessionaires' activities. *Id.* at 44a.

Given the stakes involved in cases like this one, it is no surprise that courts have long recognized "the conflict of national interests that is created by the attempt of one state to regulate resource development in another state." *Mitchell*, 553 F.2d at 1003 n.13. The decision below, however, is destined to lead to the entanglement of the state courts with the national interests of Argentina.[2] This potential for tension between sovereigns is, of course, precisely why such cases implicate federal concerns and federal common law. *See Texas Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981) (explaining that federal common law governs "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations"); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964). The need for the United States to speak with one voice on matters bearing on foreign relations is a need not only of the United States but of other countries interacting with the United States as well. The decision of the Delaware Supreme Court disserves this important need by relying solely on state-law considerations of hardships on private litigants, overlooking that Argentina does not regard this as a wholly private dispute.

2. This Court should also grant certiorari because the decision below conflicts with decisions of other American courts, both federal and state, that recognize that federal law

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[2] That the current version of Respondents' complaint has dropped some claims for extremely intrusive equitable relief hardly reduces the level of interference with Argentina's policies. Courts shape conduct through damage awards as surely as they do through injunctions. *Cf. Torres v. S. Peru Copper Corp.*, 113 F.3d 540, 543 (5th Cir. 1997) (explaining that an action concerning mining activities in Peru threatens "Peru's sovereign interests by *seeking damages* for activities and policies in which the government actively has been engaged" (emphasis added)). And, in any event, the complaint seeks equitable relief as well as damages. Pet. App. 156a.

requires them to take foreign sovereign interests into account in their decisions regarding jurisdiction over foreign disputes. Among other conflicts identified in Pan American's Petition for a Writ of Certiorari at 14-19, the Delaware court's decision flatly contradicts a decision of a federal court of appeals that arose in virtually identical factual circumstances. *See Torres v. S. Peru Copper Corp.*, 113 F.3d 540 (5th Cir. 1997). The plaintiffs in *Torres* brought state-law causes of action predicated on injuries they allegedly sustained in connection with mining and refining activities in Peru. *Id.* at 541. The nation of Peru was not a party to the suit, but (as here) it filed a letter with the State Department asserting its vital interests in the case. *Id.* at 542. Heeding Peru's expression of its sovereign interests, the Fifth Circuit observed that, *inter alia*, the government of Peru extensively regulated the mining industry and owned and licensed rights to the minerals involved in the defendant's operations. *Id.* at 543. The court concluded that the case "strikes . . . at Peru's sovereign interests" and "raises substantial questions of federal law by implicating the federal common law of foreign relations." *Id.* at 542-43. Accordingly, the Fifth Circuit affirmed the district court's dismissal of the case on grounds of comity and *forum non conveniens*. *Id.* at 542, 544.

Likewise, American state courts have explicitly taken the interests of foreign nations into account in their *forum non conveniens* analysis. For example, in *Jones v. Searle Laboratories*, the Illinois Supreme Court relied on such considerations in affirming the *forum non conveniens* dismissal of a tort action brought by a group of British subjects. 444 N.E.2d 157 (Ill. 1982). The suit concerned the product warning labels of a British company, which designed its labels to satisfy British regulatory standards. *Id.* at 161. The Illinois Supreme Court properly recognized that an Illinois court should not be permitted to "determine that

defendant's warnings were inadequate although they conformed to the law of the country in which the drugs were marketed." *Id.* Using language that might well have been addressed to the Delaware Supreme Court's attempt to regulate Argentina's natural resources, the Illinois Supreme Court stated that a trial in Illinois would amount to "an inappropriate usurpation of a foreign court's proper authority to decide a matter of local interest." *Id.* (internal quotation marks omitted).

In contrast to these and other thoughtful authorities discussed in Pan American's Petition, the Delaware Supreme Court deemed the interest of foreign nations "irrelevant" to its analysis. Pet. App. 15a. Eschewing the weighty federal concerns found so important by most courts, it decided the case solely based on the state-law factor of whether the private litigant would suffer overwhelming hardship. *Id.* at 16a, 19a. Furthering the conflict with courts such as the Fifth Circuit, the Delaware court joined the Ninth Circuit in ignoring the Republic of Argentina's formal letter to the State Department. *See Patrickson v. Dole Food Co.*, 251 F.3d 795, 804 & n.9 (9th Cir. 2001), *aff'd on other grounds*, 538 U.S. 468 (2003).

The Republic of Argentina believes that it is essential that the American courts speak with a single voice on these matters. Only review by this Court can ensure that they do so.

CONCLUSION

For the foregoing reasons, as well as those set out in the Petition, this Court should grant certiorari.

Respectfully submitted,

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